

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by
William L. Wilson, Commissioner,
Department of Human Rights,

Complainant,

ORDER FOR SUMMARY
JUDGMENT AND MEMORANDUM

VS.

Minnesota Mining and Manufacturing
Co.,

Respondent.

The above-entitled matter came on for hearing on a Motion for Summary Judgment before Ellen Lavin, duly appointed as Hearing Examiner in this matter. The hearing was held on August 19, 1977, in the City of Saint Paul, County of Ramsey, State of Minnesota.

Erica Jacobson, Special Assistant Attorney General, appeared on behalf of the Department of Human Rights. Thomas P. Kane, Esq., Oppenheimer, Wolff, Foster, Shepard & Donnelly, appeared on behalf of the Respondent.

Final briefs were received by August 26, 1977.

Notice is hereby given that, pursuant to Minn. Stat. 5 363.071, subd. 2, this is a final decision of the Department of Human Rights, and under Minn. Stat. 5 363.072, any person aggrieved hereby may seek judicial review pursuant to Minn. Stat. 15.0424

and Minn. Stat. sec. 15.0425.

Based upon all the exhibits, testimony and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. This case is certified as a class action on behalf of all present or former female salaried of employees of Respondent in Minnesota who were on a pregnancy leave of absence from a salaried position at Respondent at any time between August 6, 1973 and December 31, 1974.

2. Judgment for the Complainant is awarded on behalf of the above-stated class on the issue of liability, based upon the fact that exclusion of maternity absences from Respondent's IMP for salaried persons in Minnesota for the stated period constitutes sex discrimination under Minn. Stat. sec. 363. See attached Memorandum.

3. Judgment for the Respondent on the issue of liability shall be granted for the period of January 1, 1975 to date based upon the fact that ERISA preempts Minn. Stat. 363 from regulating Respondent's IMP. See attached Memorandum.

4. A hearing shall be held forthwith, at a time and place to be determined, regarding the issue of damages.
Dated September 16 , 1977,

ELLEN LAVIN
Hearing Examiner

M E M O R A N D U M

The Commissioner of Human Rights instituted the present action against the Respondent, alleging that the Respondent's Income Maintenance Plan (hereinafter called "IMP") discriminates against Respondent's salaried female employees employed in Minnesota on the basis of sex because it excludes disabilities resulting from pregnancy, child birth and related medical conditions or occurrences. The Plan pays monetary benefits to salaried employees absent from work due to personal illness or injury.

The Complaint was issued following the investigation of a charge brought by one Judith Troye. Ms. Troye signed her charge on February 6, 1974. Her charge was based upon the alleged discriminatory event occurring on August 6, 1973. This matter has been conditionally certified as a class action on behalf of all present or former female salaried employees of the Respondent in Minnesota who had been on pregnancy leave of absence from a salaried position at the Respondent on or after August 6, 1973, or who began a pregnancy leave of absence from a salaried position at the Respondent during the pendency of this case. The parties have stipulated that there are no questions of fact at issue, Both parties have moved for Summary Judgment.

At the date in question, August 6, 1973, the relevant state law was as follows:

Subdivision 1. Employment. Except when based on a bona fide occupational qualification, it is an unfair employment practice:

(2) for an employer, because of ... sex...

(c) to discriminate against a person with respect to his hire, tenure, com-

pensation, terms, upgrading, conditions,
facilities, or privileges of employment;
Minn, Stat. 5 363.03 (1969)

This law was in effect until Minn. Laws 1977, Ch. 408, became
effective on June 3, 1977. That law amends Minn. Stat. sec. 363
(1969), by adding the following definition:

Subdivision 28. Sex. "Sex" includes, but is not limited to, pregnancy, child birth, and disabilities related to pregnancy and child birth,"

The decisions under the Minnesota Human Rights Act prior to the enactment of Minn. Laws 1977, Ch. 408, have held that pregnancy is sex based, and that distinctions based on pregnancy is sex discrimination. See, e.g., *Myers & Schmidt, Inc. v. State by Wilson*, Hennepin County District Court, File No. 724572 (October 29, 1976); *State v. Crow*—*Wing County Welfare Board*, CCH paragraph 24,399.15, Hearing Examiner Decision (March 23, 1971),

The legislative history of Minn. Laws 1977, Ch. 408, confirms the fact that this was the position taken by the Minnesota Human Rights Department in interpreting the then-existing statute. During the debate on the floor of the Minnesota House of Representatives on May 3, 1977, the amendment in the statute was stated as follows:

Mrs. Wynia:

...Section 1 of the bill amends Section 363.01 by adding an additional definition to that section which clarifies the meaning of sex as used in that chapter. The clarification states that, sex includes but is not limited to pregnancy, child birth, and disabilities related to pregnancy or child birth. This clarification is prompted by a United States Supreme Court decision last December case *GE v. Gilbert*. In that case the United States Supreme Court stated that, an exclusion of pregnancy from a disability benefits plan providing general coverage is not a gender based discrimination at all. Essentially, the Court did in its ruling was to say that, to discriminate on the basis of pregnancy is not sex discrimination, and therefore was not prohibited by the federal statute in issue. This decision came as a surprise to many people. It came as a surprise to many civil rights groups and organizations that have worked for

years to secure equal treatment for women. Basically, the Supreme Court decision is contrary to the understanding of sex discrimination that has been understood here in Minnesota with regard to the State's Human Rights Statute, and I would just point out that the purpose of this section is not to change Minnesota law but simply to clarify Minnesota law in light of this Supreme Court decision. Now the Supreme Court's opinion only affected the interpretation of the federal

statute. It did not affect the interpretation of the Minnesota statute I think that if one looks back into the case history of complaints that have been filed and settled by the Minnesota Department of Human Rights, one will find several cases in which the Department of Human Rights has taken cases involving sex discrimination in which an employee was essentially discriminated against on the basis of her pregnancy and those cases have been resolved in favor of the employee.... This is simply to clarify the meaning of the law...."

Mr. Knickerbocker:

As I understand your explanation of the bill, you were saying that what you were trying to do was to put into statute what has been the policy of the Department of Human Rights as it relates to sex discrimination regarding pregnancy. Was I right?

Mrs. Wynia:

Yes, that's correct.

....

Mr. Knickerbocker:

...And, how would the Supreme Court's decision relate to what we're putting in statute here. Are we going to be in conflict.

Mrs. Wynia:

... The federal Supreme Court case to which I referred was a case brought under federal statute and in making its decision the United States Supreme Court set down an interpretation of the federal statute. Now, the Minnesota Supreme Court is not obligated when it interprets the meaning of Minnesota statute to apply the same interpretation to a particular construction of words that the United States Supreme Court provides for an interpretation of federal statute We know the interpretation that has been given to the prohibition on the discrimination

of sex in the Minnesota Human Rights Act but in light of this United State Supreme Court decision, let's just clarify the meaning consistently with the interpretation we have had in the past."

It is clear that the 1977 amendment to the Human Rights Act was meant to codify and clarify the then-existing law as

it had been interpreted under Minn. Stat. 5 363 (1969). No change was intended.

The United States Supreme Court in the case of General Electric Company v. Gilbert, -- U.S. -- 97 S.Ct. 401 (1976), rendered a decision under Title VII of the Civil Rights Act regarding the interpretation of the federal statute prohibiting sex discrimination. The Court, by a five to four decision, found that an employer's disability benefit plan was not discriminatory because it did not include benefits for pregnancy. Several considerations went into that decision. One consideration was the fact that at the time of enactment of Title VII, EEOC had issued an opinion letter which stated that a company's group insurance policy which excluded disabilities from pregnancy and child birth was not in violation of Title VII. The EEOC changed its position later when it issued its 1972 guidelines. However, the Court placed much reliance on the earlier opinion which was issued contemporaneously with Title VII. This is not the case in the State of Minnesota. The Minnesota Department of Human Rights has continuously, since the 1969 enactment of the law, interpreted sex discrimination to include pregnancy, and to require that pregnancy be included in disability plans.

The Court in General Electric has represented the plan as a gender free assignment of risks in accordance with normal actuarial techniques. However, this is not the framework which the State of Minnesota has viewed pregnancy. It has been consistent state policy since 1969 that discrimination based on pregnancy is illegal sex discrimination per se,

Pregnancy exclusion is neither neutral on its face, nor in its intent. The argument that pregnancy is voluntary is not a persuasive factor because, other than for child birth disabilities, the Respondent has never construed its plan as eliminating all so-called voluntary disabilities, including sport injuries, cosmetic surgery, male sex linked illnesses and other illness of like nature. Furthermore, Respondent's plan does not cover

situations where a pregnant woman, or one recovering from child birth, is stricken by a different or unassociated illness, or where a woman who is pregnant has an abnormal pregnancy, which results in other disorders. Pregnancy affords the only disability, specific or otherwise that is excluded from coverage. As Justice Brennan states in his dissent in General Electric:

"First, the plan covers all disabilities that mutually inflict both sexes.... Second, the plan ensures against all disabilities that are male-specific or have a predominant impact on males. Finally, all female-specific and impact disabilities are covered, except the most prevalent, pregnancy.... However one defines the profile of risk protected by General Electric, the determinative question must be whether the social policies and aims to be furthered by Title VII and filtered through the phrase "to discriminate" contained in section 703(a)(1) fairly forbids an ultimate pattern of coverage that ensures all-risks except a commonplace one that is applicable to women but not to men. 97 S.Ct. at 417-418."

In Brooklyn Union Gas Co. v. New York State Division of Human Rights, 290 N.Y.S.2d 884, (1976), the highest court of New York State considered the question of whether or not employers must include pregnancy in their disability benefits programs and held that they must do so because to do otherwise would be sex discrimination. New York State had a disability benefits law which excepted pregnancy from the minimum benefits required by that law. The Court held that the disability benefits laws fixed a floor, not a ceiling on the benefits. It contained no prohibition against granting disability benefits in excess of those mandated by the disability benefits law. The Court held that the objective of the Human Rights Law was different from, though not necessarily at odds with, the objective of the disability benefits law. New York State's Human Rights Law had the same language regarding sex discrimination as Title VII. The N. Y. court examined the General Electric decision, and stated as follows:

"We are aware, of course, that the United States Supreme Court has recently reached a contrary result in

construing Title VII The pertinent provisions of that statute are substantially identical to those of section 296 of the executive law of the State of New York. The determination of the Supreme Court, while instructive, is not binding on our court as we now confront the contention of private employers that the provisions of our state's disability benefits law excuse their failure to conform to the standard that we have held our human rights law demands of public employers." 290 N.Y.S. 2d at 886,

The U.S. Supreme Court has interpreted Title VII contrary to what has been the practice in Minnesota. It is not necessary for this Hearing Examiner to follow the Court's decision in General Electric. General Electric was a federal case interpreting a federal statute, The legislative history of the Minnesota statute, the continuous practice of interpreting and enforcing it by the Department of Human Rights and the judicial decisions interpreting it have provided a history on which to base a finding that exclusion of pregnancy from an employment maintenance benefit plan is sex discrimination. We are not precluded from this finding by Title VII because Title VII only prohibits the enforcement of laws which are in conflict with it, There is no prohibition against enforcing a law which merely exceeds Title VII's jurisdiction.

The Respondent has raised the issue that the initial charging party relied on EEOC guidelines when making her charge. The charging party is not presumed to know which law she must rely on, nor is she required to cite the law correctly in her charge in order for it to be an effective one. She is not a lawyer, nor a judge. She is merely an employee who believes she has been wronged. To hold her to any greater standard would be inequit-

able.

The Respondent further states that pregnancy cannot be included in its IMP because it is not an illness or injury, and their plan only covers "illness or injuries". However, in reviewing the plan, illness or injury is not defined. The only clarification is one which excludes pregnancy. The record shows

that things other than illness and injuries are covered, for example, doctor or dentist appointments, and cosmetic surgery. The Respondent, by relying on the terminology of its plan which states it covers "illness or injuries," is self-serving and does not assist us in our purposes. We must look beyond the mere words to see how they are applied. And in this case, they are applied to other things besides injuries and illnesses.

In conclusion, based upon our examination of the history of the Minnesota Human Rights Act, we must conclude that denial of income maintenance benefits because of pregnancy is sex discrimination under Minn. Stat. sec. 363 (1969) and Minn. Laws 1977, Ch. 408.

However, once having found this, we must look to see whether or not the Pension Reform Act of 1974 (hereinafter called "ERISA") affects the validity and application of the Minnesota Human Rights Act. ERISA Act sec 514(a) states that the provisions of ERISA supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in Act 5 4(a) and not exempt under Act sec. 4(b). This section was to take effect on January 1, 1975. Looking at Act sec. 3(3), we see that the term employee benefit plan means an employee welfare benefit plan, Act 5 3(1) defines employee welfare plan as any plan, fund or program which was established or was maintained for the purpose of providing its participants or their beneficiaries through the purchase of insurance or otherwise (a) medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment. Therefore, unless Respondent's IMP is exempt under Act 4(b), it falls within the purview of that section because it is an employee benefit plan as defined by ERISA. ERISA applies to any employee benefit plan established or maintained by any employer engaged in commerce, or in any industry or activity affecting commerce. See Act sec. 4(a)(1).

Act sec. 4(b) lists the exceptions to the Act. The Respondent's IMP does not fall under any of these exceptions.

Therefore, ERISA supersedes any and all state laws insofar as they relate to any employee benefit plan and insofar as those

state laws purport to regulate, directly or indirectly, the terms and conditions of the employee benefit plans covered by ERISA. Act 514(c)(2). This limitation does not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975,

In light of this analysis, it would appear that Minnesota Statutes 5 363 is superseded by ERISA insofar as it attempts to directly or indirectly regulate the terms and conditions of Respondent's employee benefit plan, i.e., to require that pregnant employees be included in its IMP, unless the legislative intent was otherwise.

It is clear from the legislative history of ERISA that Congress intended that discrimination based on race, color, national origin, religion or sex, affecting participation in pension or profit sharing plans be prohibited under section 703(a) of the Equal Employment Opportunity Act. 119 Cong. Rec. 30409-10 (September 19, 1973); 120 Cong. Rec. H4726 (February 28, 1974). Therefore, ERISA is subject to Title VII,

Was it intended that ERISA preempt state law even when those laws do not deal directly with employment benefit plans but are laws of the nature of the Minnesota Human Rights Law? The ERISA language originally introduced in the House of Representatives with respect to preemption stated that the act would supersede any and all laws of the states insofar as they related to the fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans. H.R. 2, 93rd Cong, First Session (1973). The original Senate version of ERISA proposed that ERISA supersede state laws which were related to the subject matters regulated by the act. in explaining

the bill as it came out of conference committee, Senator Javits
stated as follows:

"Both House and Senate bills provided
for preemption of State law, but --
with one major exception appearing in
the house bill -- defined the perimeters
of preemption in relation to the areas
regulated by the bill. Such a formula-
tion raised the possibility of endless
litigation over the validity of State

action that might impinge on federal regulation, as well as opening the door to multiple and potential conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the federal regulatory scheme.

Although the desirability of further regulation--at either the State or Federal level--undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required --but for certain exceptions--the displacement of State action in the field of private employee benefit programs... ' " 120 Cong. Rec. 29942 (1974). See also S.R. 93-1090, 93rd Cong., 2d Sess, 383 (1974); 120 Cong. Reg. 29933 (1974).

Based upon the legislative history and the clear meaning of the words of ERISA, it is apparent that it was meant for ERISA to preempt the field insofar as state laws affected, either directly or indirectly, the terms and conditions of employee benefit plans. The Minnesota Human Rights Act requires that pregnant employees be covered by Respondent's IMP in order for the plan to be nondiscriminatory. In requiring coverage of pregnant employees by the plan, the State would be attempting to indirectly affect the terms and conditions of the plan. As such, it falls within the preemption provision of ERISA, and cannot be held to be effective. Respondent, as an employer which comes under the terms of ERISA by the nature of its business and by the nature of its employee benefit plan is subject to ERISA and is not subject to Minn. Stat. A 363 insofar as it requires that Respondent include pregnancy as a covered condition under their IMP. Employers covered under ERISA need only follow the requirements of Title VII and Title VII does not require that pregnancy be included in coverage under employee benefit plans.

The Complainant argues that the "enforcement of the Minnesota Human Rights Act does not conflict with the regulatory scheme of ERISA, and is not an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." See Complainant's Reply Brief, p. 4. We cannot find this to be so. It is clear from the legislative history and from the notes accompanying ERISA that one of the main purposes and objectives of

Congress was to establish uniform laws throughout the United States insofar as they regard employment benefit plans. Any interference in this objective of uniformity is prohibited by the preemption clause of ERISA,

In light of the foregoing, the Respondent was not in violation of Minnesota Human Rights Act after January 1, 1975, and is under no obligation to change its IMP now.

To comply with this decision, it is necessary to recertify the class limiting it to those of Respondent's female salaried employees employed in Minnesota who had been on a pregnancy leave of absence from a salaried position at the Respondent between August 6, 1973, and December 31, 1974. Testimony will be taken regarding the damages, if any, to be awarded to the class,